

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 3/22/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Modification No. 1 to Agreement with Building & Earth Sciences, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to modify the agreement with Building & Earth Sciences, Inc. for Construction Materials Testing Services Redstone Gateway, Phase 1A, Project No. 65-10-SP21, as adopted by Resolution No. 10-981 of December 2, 2010, by Modification No. 1

Note: If amendment, please state title and number of the original

10-981

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow

and accomplish and; any other information that might be helpful.

This modification is for the continuation to provide testing services on concrete and soils during the construction of Redstone Gateway, Phase 1A and 1F projects for a total modification amount of \$29,867.50. An additional three hundred sixty-five (365) calendar days added to contract completion. New end date: December 2, 2012. Account No. 05-6500-0811-2004.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Sheldon

Date: 3/7/12

ROUTING SLIP

CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **3/22/2012**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Modification #1**

Document Name: **BESI-Redstone Gateway 1A & 1F-Project No. 65-10-SP21**

City Obligation Amount: **\$29,867.50**

Total Project Budget: **\$79,647.75**

Uncommitted Account Balance: **0**

Account Number: **05-6500-0811-2004**

Procurement Agreements

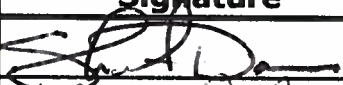



Not Applicable

Not Applicable

Grant-Funded Agreements

Not
Applicable

Grant Name:

Department	Signature	Date
1) Originating		3/7/12
2) Legal		3/9/12
3) Finance 		3/9
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

RESOLUTION NO. 12-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama to enter into Modification No. 1 to the Agreement with Building & Earth Sciences, Inc. adopted and approved on the 2nd day of December, 2010, by the City Council of the City of Huntsville, Alabama by Resolution No. 10-981, as attached hereto.

BE IT FURTHER RESOLVED that the total contract amount be and hereby is modified from FORTY-NINE THOUSAND SEVEN HUNDRED EIGHTY AND .25/100 DOLLARS (\$49,780.25) to SEVENTY-NINE THOUSAND SIX HUNDRED FORTY-SEVEN AND .75/100 DOLLARS (\$79,647.75), including this Modification No. 1, an increase of TWENTY-NINE THOUSAND EIGHT HUNDRED SIXTY-SEVEN AND .50/100 DOLLARS (\$29,867.50). There are an additional three hundred sixty-five (365) calendar days added to contract completion. New end date: December 2, 2012. Agreement is substantially in words and figures similar to that document attached hereto and identified as "Modification No. 1 to Agreement between City of Huntsville and Building & Earth Sciences, Inc. for Construction Materials Testing Services Redstone Gateway, Phase 1A, Project No. 65-10-SP21, as adopted by Resolution No. 10-981 of December 2, 2010" consisting of a total of three (3) pages plus sixteen (16) additional pages consisting of Attachment "A", "E-Verify Clause", and "Contractor's Affidavit and MOU" and the date of March 22, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 22nd day of March, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 22nd day of March, 2012.

Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA)
COUNTY OF MADISON)
Modification No. 1 to Agreement between
the City of Huntsville and Building & Earth
Sciences, Inc. for Construction Materials
Testing Services Redstone Gateway, Phase
1A, Project No. 65-10-SP21, as adopted by
Resolution No. 10-981 of December 2, 2010

THIS MODIFICATION TO AN AGREEMENT entered in on the 2nd day of December, 2010, is hereby amended by Modification No. 1 dated March 22, 2012, by and between the CITY OF HUNTSVILLE, ALABAMA, a municipal corporation in the State of Alabama (OWNER) and BUILDING & EARTH SCIENCES, INC., (ENGINEER).

WITNESSETH

WHEREAS, the firm identified as the ENGINEER to the Agreement dated December 2, 2010, has proposed a change, identified as Attachment "A" to the Original Agreement. This modification delineates a change to provide continuation of testing services for Redstone Gateway, Packages 1A and 1F.

WHEREAS, the Owner desires that the contract drawings be altered to be consistent with Attachment "A" hereto.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Owner and the ENGINEER agree to the following modifications to the agreement:

1. Building & Earth Sciences, Inc. will provide for continuation of testing services at a time and materials cost not to exceed TWENTY-NINE THOUSAND EIGHT HUNDRED SIXTY-SEVEN AND .50/100 DOLLARS (\$29,867.50). There are an additional three hundred sixty-five (365) calendar days added to contract completion. New end date: December 2, 2012.
2. Item #1 shall be performed in accordance with the original agreement dated December 2, 2010 and approved by the City Council by Resolution No. 10-981, and as described in the letter from Robert Adams to Chris McNeese, dated January 12, 2012, shown as Attachment "A".

President of the City Council of the City of
Huntsville, AL

Date: _____ March 22, 2012

3. The terms of this contract modification and the execution thereof is not in any way to be viewed as a waiver on the part of the Owner of any of its rights pursuant to the Contract as modified previously.
4. All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have entered their hands and seals and attest to the same with the signature of the Mayor being the official act of the said municipality in accordance with his duly constituted authority.

THE CITY OF HUNTSVILLE, ALABAMA,
a municipal corporation

By: _____
Tommy Battle
Its Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer of the City of Huntsville, a municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____ 2012.

Notary Public
My Commission Expires: _____

ENGINEER: BUILDING & EARTH
SCIENCES, INC.

By: Robert M. Adams

ATTEST:

Maura Hill

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Robert Adams, as Huntsville Branch Manager, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as such officer, executed the same with full authority for and as the act of said Corporation on the day the same bears day.

GIVEN under my hand and official seal this the 8th day of March 2012.

Mary J. Hollingsworth
Notary Public
My Commission Expires: 3/28/2015

ATTACHMENT "A"**BUILDING & EARTH**

Geotechnical, Environmental, and Materials Engineers
2607 Leeman Ferry Road Suite 5 • Huntsville, AL 35801
Ph: (256) 713-0056 • Fax (256) 539-7021
www.buildingandearth.com

January 12, 2012

Mr. Chris McNeese
City of Huntsville Engineering Department
320 Fountain Circle
Huntsville, AL 35801

Subject: Proposal to Provide Construction Materials Testing
Public Infrastructure Areas of Redstone Gateway
Redstone Arsenal, AL
Building & Earth Proposal No: HV14001

Dear Mr. McNeese:

Building & Earth Sciences, Inc. is respectfully requesting additional funding to complete Phase 1A as well as budget for Phase 1F at Redstone Gateway.

SCOPE OF SERVICES

Based on our understanding of the project, our scope of services will include field density testing, asphalt pavement testing, concrete testing and inspection for culverts, and other quality assurance related inspections. The purpose of our presence at the site will be to monitor the earthwork contractor's activity and perform field density tests to determine if the earthwork is progressing in accordance with the project plans and specifications. The quality assurance and inspection services will be conducted for culverts, utility installations, etc.

During construction, our project manager will visit the project site during the critical periods of earthwork, including site grading near fill slopes or initiating fill in a new area. We will make periodic visits to determine if the observed site grading activities conform to the project specifications and generally acceptable construction practices. The project engineer will review the daily reports generated by the field technician and provide technical as well as administrative oversight for the project. An engineering technician will be assigned to the project site to perform daily testing and observation activities. Daily field reports will be prepared documenting the results of our tests.

ANTICIPATED PROJECT BUDGET

The cost for our QA services will depend of the actual time required to maintain an adequate level of testing. We estimate the following will be necessary to complete 1A and perform testing and inspection for Phase 1F:

Complete Existing Work -----	\$ 5,000.00
Field Density Testing-----	\$ 12,372.50
Concrete Testing-----	\$ 7,516.25
Asphalt Testing -----	\$ 4,978.75
Budgetary Estimate (Completion of 1A + 1F)-----	\$ 29,867.50

Our proposed hourly rates are attached. We look forward to working with you during the site preparation phase of this project. If you have any questions regarding this proposal, or care to discuss any modifications in the total scope of services outlined, please call us. Please sign and return the attached Authorization sheet, which will serve as our formal authorization to proceed, and incorporates our general terms and conditions into our agreement.

CLOSING

We look forward to working with you during the construction materials testing phase of this project. If you have any questions or care to discuss any modifications to the total scope of services outlined, please feel free to contact us.

Respectfully submitted,

Building & Earth Sciences, Inc.

Robert M. Adams

Robert M. Adams, P.E.

Huntsville Branch Manager

radams@buildingandearth.com



Proposal HV14001

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BUILDING & EARTH SCIENCES, INC.**2010 CMT FEE SCHEDULE****(These rates will remain in effect for the duration of the project)****PERSONNEL**

Clerical Services.....	\$30.00/hour
Engineering Technician- concrete.....	\$32.00/hour
Engineering Technician- soils (includes Nuclear Moisture-Density Gauge).....	\$ 35.00/hour
Structural Steel Inspector (CWI) or Special Inspector.....	\$50.00/hour
Field Engineer.....	\$55.00/hour
Staff Engineer.....	\$65.00/hour
Project Manager, PE.....	\$75.00/hour
Sr. Project Manager, P.E.....	\$100.00/hour
Geotechnical Division Manager, P.G., P.E.	\$125.00/hour

SOIL TESTING

Standard Proctor Test (<i>ASTM D-698 or AASHTO T-99</i>).....	\$95.00/each
Modified Proctor Test (<i>ASTM D-1557 or AASHTO T-180</i>).....	\$110.00/each
One-Point Proctor Verification	
Standard Proctor.....	\$40.00/each
Modified Proctor.....	\$50.00/each
Atterberg Limits Determination.....	\$75.00/each
Material Finer than No. 200 Sieve (washed).....	\$50.00/each
Mechanical Grain Size Analysis.....	\$70.00/each
Moisture Content Determination.....	\$10.00/each

CONCRETE AND AGGREGATE TESTING

Concrete Cylinders.....	\$12.00/each
Grout or Mortar Cubes.....	\$16.00/each
Review of Submitted Mix Design for Compliance with ACI Requirements.....	\$250.00/each

ADMINISTRATIVE/MANAGEMENT

A transportation charge of \$0.60 per mile will be included for all travel to and from the project location in excess of 50 miles.

Overtime will apply for hours worked in excess of eight (8) hours per day or for work performed on weekends or holidays. Overtime will be billed at a rate of 1.5 times the normal unit rates.

Engineering review of 0.25 hours per report is typically required for report review and incidental consultation. Clerical services will be billed at a rate of 0.25 hours per report to cover the cost of report preparation, revisions and distribution. Project coordination time will be billed according to the actual time required for scheduling.



Contractor's E-Verify Clause and Affidavit

Effective January 1, 2012, this notice shall be included in all contracts awarded for labor, supplies, or services for the City of Huntsville, Alabama.

E-VERIFY – NOTICE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, *Code of Alabama (1975) § 31-13-1 through 31-13-30* (also known as and hereinafter referred to as "the Alabama Immigration Act") is applicable to contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such by sworn affidavit signed before a notary. Such business entity or employer shall provide a copy of such affidavit to the City of Huntsville as part of its bid or proposal for the contract along with documentation establishing that the business entity or employer is enrolled in the E-Verify program. The required affidavit form is included at the end of this notice. The original affidavit for your business entity must be returned to the City of Huntsville, the affidavit for the subcontractors should be kept on file in your office, and be made available to the city if requested.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are required of every subcontractor in accordance with §31-13-9(c) and shall maintain records that are available upon request by the City, state authorities or law enforcement to verify compliance with the requirements of the Alabama Immigration Act. Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2) or in the case of a subcontractor, in accordance with §31-13- 9 (f) (1) & (2).

FORM FOR SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b)

AFFIDAVIT FOR BUSINESS ENTITY/EMPLOYER /CONTRACTOR

(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of Alabama

County of Jefferson

Before me, a notary public, personally appeared Allison Washington (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as Human Resources Director (state position) for Building & Earth Sciences, Inc. (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program. (ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM) Firms may link to the E-Verify portal through

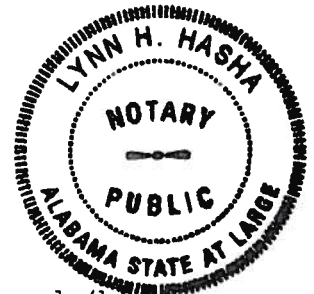
<http://immigration.alabama.gov/eVerify.aspx>

Allison Washington Signature of Affiant

Sworn to and subscribed before me this 29th day of February, 2012.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Lynn H. Hasha Signature and Seal of Notary Public



Author: Jean Brown

Statutory Authority: Code of Alabama, sections 31-13-9 (a) and (b);
Section 31-13-9 (h).

Company ID Number: 159341

THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION

MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Social Security Administration (SSA), the Department of Homeland Security (DHS) and **Building & Earth Sciences, Inc.** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). E-Verify is a program in which the employment eligibility of all newly hired employees will be confirmed after the Employment Eligibility Verification Form (Form I-9) has been completed.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note).

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF THE SSA

1. Upon completion of the Form I-9 by the employee and the Employer, and provided the Employer complies with the requirements of this MOU, SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all newly hired employees and the employment authorization of U.S. citizens.
2. The SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. The SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. The SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
4. SSA agrees to establish a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 3 Federal Government work days of the initial inquiry.

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5. SSA agrees to establish a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY

1. Upon completion of the Form I-9 by the employee and the Employer and after SSA verifies the accuracy of SSA records for aliens through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct:

- Automated verification checks on newly hired alien employees by electronic means, and
- Photo verification checks (when available) on newly hired alien employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the Employer a manual (the E-Verify Manual) containing instructions on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify.. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, and U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by alien employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act and federal criminal laws, and to ensure accurate wage reports to the SSA.

7. DHS agrees to establish a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

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8. DHS agrees to establish a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the E-Verify Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

- A. The employer agrees that all employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.
- B. Failure to complete a refresher tutorial will prevent the employer from continued use of the program.

5. The Employer agrees to comply with established Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2 (b) (1) (B)) can be presented during the Form I-9 process to establish identity).
- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The employer will use the photocopy to verify the photo and to assist the Department with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a

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rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of E-Verify ; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$500 and \$1,000 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ any employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify Manual. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. In all cases, the Employer must use the SSA verification procedures first, and use DHS verification procedures and photo screening tool only after the the SSA verification response has been given.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU. The Employer must use E-Verify for all new employees and will not verify only certain employees selectively. The Employer agrees not to use E-Verify procedures for re-verification, or for employees hired before the date this MOU is in effect. The Employer understands that if the Employer uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and the immediate termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III.B. below) regarding tentative nonconfirmations, including notifying employees of the finding, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1 (1)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification to verify work authorization, a tentative nonconfirmation, or the finding of

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a photo non-match, does not mean, and should not be interpreted as, an indication that the employee is not work authorized. In any of the cases listed above, the employee must be provided the opportunity to contest the finding, and if he or she does so, may not be terminated or suffer any adverse employment consequences until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match, then the Employer can find the employee is not work authorized and take the appropriate action.

11. The Employer agrees to comply with section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify, discharging or refusing to hire eligible employees because they appear or sound "foreign", and premature termination of employees based upon tentative nonconfirmations, and that any violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties pursuant to section 274B of the INA and the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-7688 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from the SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of newly-hired employees after completion of the Form I-9. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a (i) (1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to allow DHS and SSA, or their authorized agents or designees, to make periodic visits to the Employer for the purpose of reviewing E-Verify -related records, i.e., Forms I-9, SSA Transaction Records, and DHS verification records, which were created during the Employer's participation in the E-Verify Program. In addition, for the purpose of evaluating E-Verify, the Employer agrees to allow DHS and SSA or their authorized agents or designees, to interview it regarding its experience with E-Verify, to interview employees hired during E-Verify use concerning their experience with the pilot, and to make employment and E-Verify related records available to DHS and the SSA, or their designated agents or designees. Failure to comply with the terms of this paragraph may lead DHS to terminate the Employer's access to E-Verify.

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ARTICLE III

REFERRAL OF INDIVIDUALS TO THE SSA AND THE DEPARTMENT OF HOMELAND SECURITY

A. REFERRAL TO THE SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.
2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.
3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a referral letter and instruct the employee to visit an SSA office to resolve the discrepancy within 8 Federal Government work days. The Employer will make a second inquiry to the SSA database using E-Verify procedures on the date that is 10 Federal Government work days after the date of the referral in order to obtain confirmation, or final nonconfirmation, unless otherwise instructed by SSA or unless SSA determines that more than 10 days is necessary to resolve the tentative nonconfirmation..
4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO THE DEPARTMENT OF HOMELAND SECURITY

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.
2. If the Employer finds a photo non-match for an alien who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when

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the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact the Department through its toll-free hotline within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The Employer understands that if it cannot determine whether there is a photo match/non-match, the Employer is required to forward the employee's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

ARTICLE IV

SERVICE PROVISIONS

The SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access the E-Verify System, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify manual. Even

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without changes to E-Verify, the Department reserves the right to require employers to take mandatory refresher tutorials.

Termination by any party shall terminate the MOU as to all parties. The SSA or DHS may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine.

Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

The employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA).

The foregoing constitutes the full agreement on this subject between the SSA, DHS, and the Employer.

The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify Operations at 888-464-4218.

Employer Building & Earth Sciences, Inc.

Washington Allison

Name (Please type or print)

Title

Electronically Signed

10/20/2008

Signature

Date

Department of Homeland Security – Verification Division

Company ID Number: 159341

USCIS Verification Division

Name (Please type or print)

Title

Electronically Signed

10/20/2008

Signature

Date

Company ID Number: 159341

**INFORMATION REQUIRED
FOR THE E-VERIFY PROGRAM**

Information relating to your Company:

Company Name: Building & Earth Sciences, Inc.

Company Facility Address: 5545 Derby Drive
Birmingham, AL 35210

Company Alternate Address: _____

County or Parish: JEFFERSON

Employer Identification Number: 63119535

North American Industry
Classification Systems Code: 541

Parent Company: _____

Number of Employees: 100 to 499 Number of Sites Verified for: 10

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State.

• LOUISIANA	1 site(s)
• ALABAMA	3 site(s)
• KENTUCKY	1 site(s)
• NORTH CAROLINA	1 site(s)
• GEORGIA	2 site(s)
• ARKANSAS	1 site(s)
• OKLAHOMA	1 site(s)

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:	Washington Allison	Fax Number:	(205) 451 - 5019
Telephone Number:	(205) 836 - 6300 ext. 218		

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E-mail Address:	awashington@buildingandearth.com		
Name:	Heather Russell		
Telephone Number:	(205) 836 - 6300 ext. 239	Fax Number:	(205) 451 - 1232
E-mail Address:	hrussell@buildingandearth.com		